VIRGINIA LAW REGISTER

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Patent Law Amendments.

Congress is given power under art. 1, § 8, subd. 8, of the Federal Constitution "to promote the progress of science and useful arts by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries." There are pending before Congress various bills to amend the patent laws by providing for compulsory licenses of various sorts, and to prevent the manufacturer of a patented article from attaching conditions and restrictions to its use after he has parted with his title thereto. These amendments grow out of the recent decision of the so-called Dick Case. We have just read an able article against these amendments in the *Green Bag,* by Gilbert H. Montague of the New York Bar. We cannot agree with his claim that a patent right is property which the patentee has the absolute and uncontrollable right to use or not to use for seventeen years, and to prevent any one else from using it for the like period, likening such a right to that existing in reference to other sorts of property, such as unimproved real estate, unoccupied houses, idle horses or unworn clothing, and the statement that congress has no more right to require the owner of a patent to use it or allow it to be used, than it would have to so legislate with regard to these kinds of property. The error arises from not recognizing the object for which congress is authorized to give the inventor the exclusive right to his discovery, viz, *to promote the progress of science and useful arts.* The exclusive control of the manufacture, use and sale of an invention may well tend to promote the progress of science and useful arts, but we cannot see how the arbitrary suppression of a patented article could do so, except perhaps in extreme cases. We believe that as to this exclusive right given him under the patent law, the patentee *is a kind of trustee for the public.* It is certainly not given him for his own benefit exclusively. So

the question arises whether these proposed amendments conduce to promote the progress of science and useful arts. It is not a question of the right of congress to so legislate. Upon the undesirability of this legislation, from this standpoint, a strong case is made out by those opposed to it.

License Restrictions.

And then, as the main ground of the claim for the absolute right to put restrictions upon the manner in which the patented article shall be used or disposed of by vendees thereof rests upon the notion that he has the absolute right to use or not to use or allow to be used, the patented articles, and hence can allow it to be used under any arbitrary conditions which he thinks proper, is not a doubt cast upon the corollary by this flaw in the proposition upon which it is based? Does not the question of the right to place such restrictions upon the licenses granted or sales made, depend, in its final analysis, upon whether such restrictions will tend to promote the progress of science and useful arts? Without the Federal statute and the constitutional provision, an inventor would have to protect himself as best he could from immitation and infringement. Without the authority of the power given under the Federal constitution, the act of congress would fall, and, in so far as it goes beyond that authority, it is void. The patentee's rights are based upon and limited by the principle that any exclusive right given him is *not for his individual benefit,* but to promote the progress of science and useful arts.

The Airship in Court.

Now that the airship has come into such common use, and substantial damage to landowners over which the craft is navigated is inevitable, the courts cannot much longer dodge an adjudication upon the status of the common-law rule of real property, that the proprietor owns ab solo usque ad cælum. We predict, however, that the court will hold this maxim to be obsolete, because it is not adapted to the rapid physical development of a new and comparatively unsettled country. This interesting

question came up recently for decision in the city of Paris, France.

The case in question involved the right of a landowner to say whether an aeronaut might fly over his land. A number of landed proprietors in the vicinity of the Buc aerodrome brought suit against Maurice Farman, alleging that they had been materially damaged by the frequent flying over their lands, horses being frightened and people annoyed by the noise of the engines, not to speak of damage done to fields in the landing of machines.

The attorney for Farman contended that ownership of the land did not carry with it the right to the air above, else a landlord might claim the very stars in the sky. He admitted that under the French law everything above and below the surface belongs to a landlord, but he did not admit that this construction included air. The court awarded $100 damages to one farmer whose land had been damaged in a landing, but declined to pass on the larger question of prohibiting future flights, on the ground that aerial navigation had not yet been regulated by the law courts.

The pith of the judgment was that aviators might fly over private property, and if they caused damages the owners of the property might proceed against them, which leaves the matter pretty much where it was in the beginning.

The Recent Bar Examination.

The result of the recent bar examination in Virginia shows that the Board of Examiners are examining the papers with great care, and have no intention of continuing the lax methods that formerly existed of benignantly allowing the applicants to get through, and leave it to the public to ascertain their unfitness to practice law. The *Richmond Times-Dispatch* says: "While the percentage of failures among the graduates of other state institutions was by no means as high as Richmond College, it was large enough to attract comment. Washington and Lee, which has for years boasted that every one of its graduates makes the State Board, was disappointed in seven degree men, who failed to make the required average.

Of the class of thirty-six from the University of Virginia, twelve failed at Roanoke. Of the total of one hundred and twelve from all the colleges, fifty-two, or scarcely half of those who took the examination were granted license." From every view point, it should be a matter of congratulation rather than regret that such was the result. The fact that nearly every man who took the examination before the court passed it, not only lessened the honor due to those that really were entitled to pass, but showed very conclusively a reprehensible laxity in examining the papers. No conclusions adverse to the methods or thoroughness of the teaching in the law schools should be drawn from the fact that undergraduates make an examination which degree men fail on. The personal equation, or the radical difference between men said to be born "free and equal," must always be taken into account, and will assert itself often to the mortification of those who happen to possess college degrees, and *still* are not able to cope with the undergraduates. A man with a good, logical mind, and one year's training in a law school is frequently more capable than a man who has completed the entire course by dint of hard labor, and secured his B. L. Naturally the professors of these various institutions feel somewhat piqued because the results of this examination may be regarded by unthinking persons as a reflection on their ability as teachers. To our minds, however, this does not follow; many a man who is capable of mastering one topic at a time by cramming for an examination, is utterly lost when the whole field of the law is placed before him at once, as is the case in examinations for admission to the bar. The selection of questions and the order in which they are placed in the paper is, however, subject to some criticism. Only one question is given on the law of contracts, and not a single question on corporations or evidence; in other words, the examination is poorly balanced. The first ten questions deal with practice and procedure. This is devoting too much of such a short examination to practice thereby excluding many important questions of substantive law and evidence, moreover the examiners to be logical should have placed practice questions last in the paper. But the examination is not subject to the criticism of being unfairly rigid. Any man en-

titled to go to the bar should be able to answer seventy-five per cent of these questions, and we are glad that the Board of Examiners has served notice, in this way, that the bar examination is not merely a matter of form so as to comply with the requirements of the statute, but is a real test in which the mental attainment alone of the applicant will count.

Rules of Equity Practice in Federal Courts.

With the aid of an elaborate card index system, three members of the Supreme Court of the United States, namely, Chief Justice White and Associate Justices Lurton and Van Devanter, are laboring this summer over a new set of rules for equity practice in the Federal courts, which are expected to almost revolutionize the work of these tribunals. They expect to be able during the next term to lay before the full court the result of their labors. Once the court has given its approval, the new rules will be promulgated for enforcement throughout the Federal courts of the United States.

Thousands of suggestions for amendments to the present rules have been received by the court committee of three, through its secretary, W. J. Hughes, of the Department of Justice. They came from judges, bar associations, and individual lawyers. The suggestions were written off in triplicate and indexed on sheets, and Chief Justice White and Associate Justices Lurton and Van Devanter each furnished with a set.

The work is the result of a determination of Chief Justice White, settled upon shortly after he became the head of the court. He regarded the present rules, unamended through the decades, as instruments of delay and invitations to tremendous cost bills.